27

JUN 7 1946
CHARLES ELMORE CROPLEY
CLERK

Nos. 1172-1175

# In the Supreme Court of the United States

OCTOBER TERM, 1945

GIUSEPPE BOZZO FU LORENZO, AS OWNER OF THE STEAM VESSEL "ANTOINETTA," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN

A. T. ROSASCO, AS OWNER OF THE STEAM VESSEL "SANTA ROSA," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.

MARIANO MARESCA AND COMPANY, AS OWNER OF THE STEAM VESSEL "MAR GLAUCO," HER ENGINES, BOILERS, ETC, PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.

"ITALIA"—SOCIETA ANONIMA DI NAVIGAZIONE, AS OWNER OF THE STEAM VESSEL "BELVEDERE," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.

*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

**BRIEF FOR THE UNITED STATES AND THE ALIEN PROPERTY CUSTODIAN IN OPPOSITION**

# INDEX

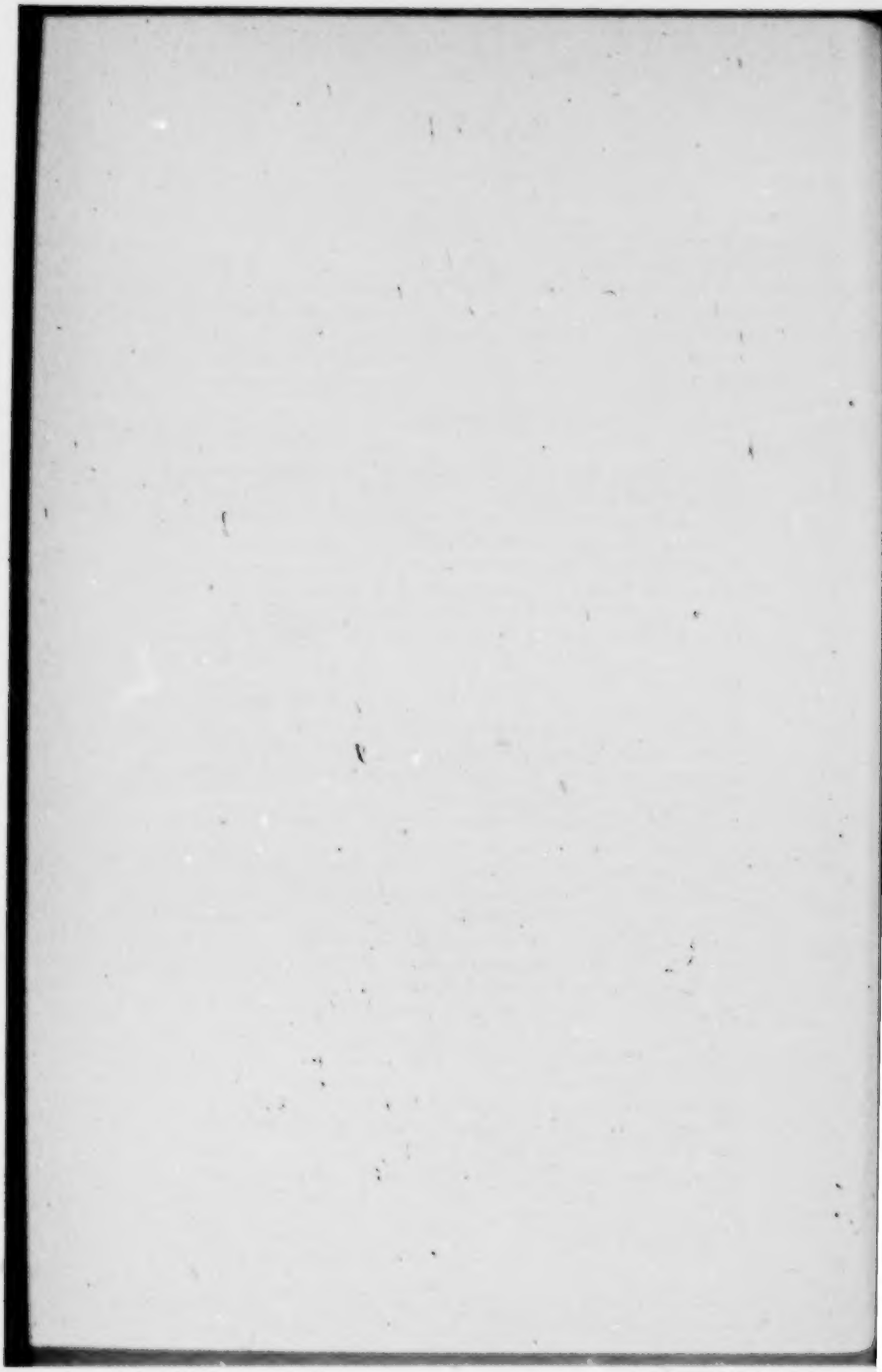

Page

Opinions below
Jurisdiction
Question presented
Statutes and Executive Orders involved
Statement
Argument
Conclusion
Appendix

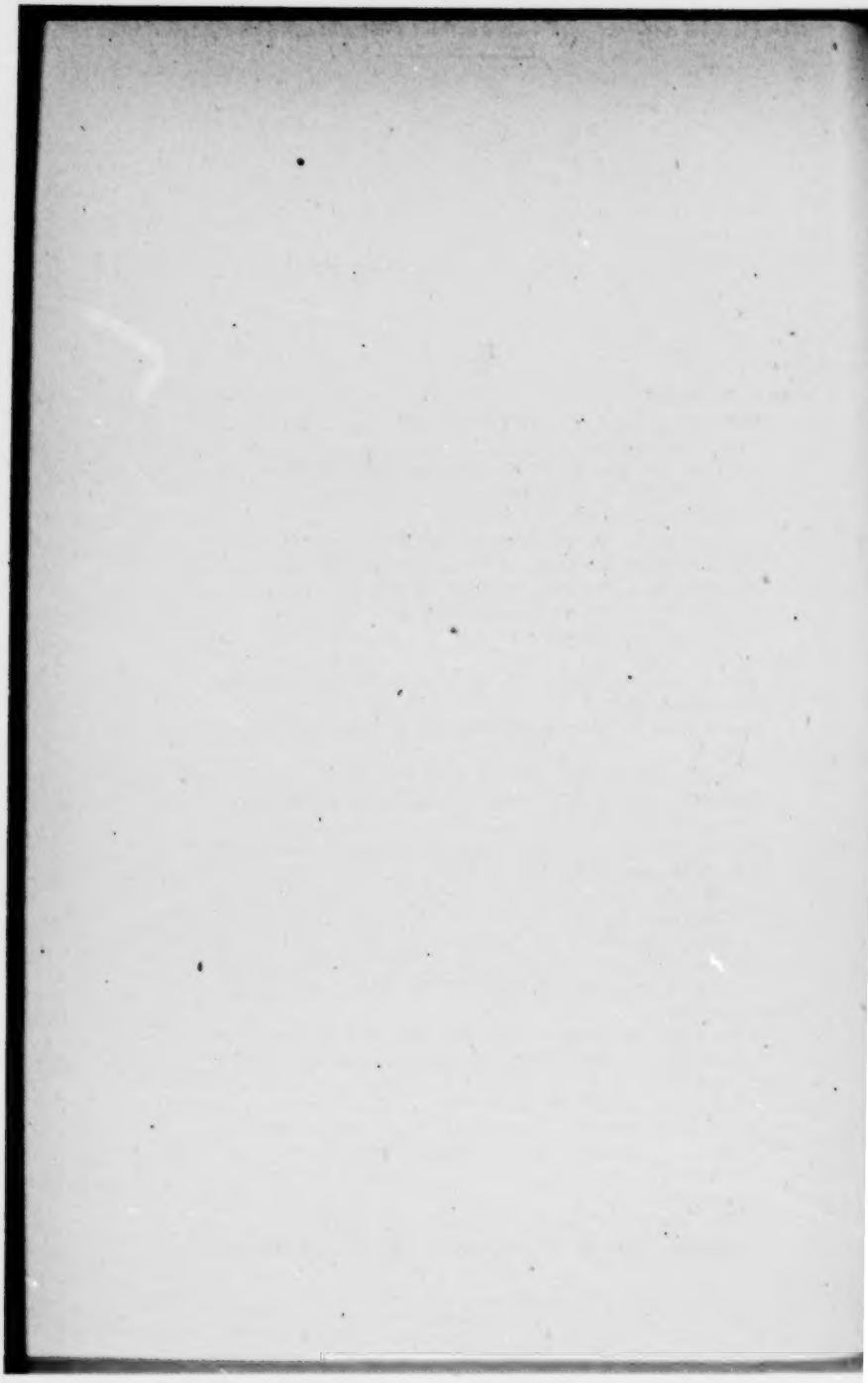

## CITATIONS

Cases:


*Ado O, The*, E. D. La., decided February 12, 1943
*Central Trust Co.* v. *Garvan*, 254 U. S. 554
*Citizens Protective League et al* v. *Clark, Attorney General*, App. D. C., decided May 2, 1942
*Clara, The*, E. D. Va., decided March 5, 1943
*Commercial Trust Co.* v. *Miller*, 262 U. S. 51
*Confidenza, The*, S. D. Fla., decided January 5, 1943
*Conte Biancamono, The* D. C. Z., decided September 30, 1943
*Cummings* v. *Deutsche Bank*, 300 U. S. 115
*Deutsch-Sustralische Sc* v. *United States*, 59 Ct. Cls. 450
*Farbwerke* v. *Chemical Foundation*, 283 U. S. 152
*Giuan, The*, E. D. Va., decided March 5, 1943
*Guidonia, The*, E. D. Va., decided March 5, 1943
*Hirabayashi* v. *United States*, 320 U. S. 81
*Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U. S. 398
*Horowitz* v. *United States*, 267 U. S. 458
*Ida Z. O., The*, S. D. Ala., decided November 13, 1942
*Ircania, The*, S. D. Fla., decided January 5, 1943
*Kahn* v. *Garvan*, 263 Fed. 909
*Laconia, The*, E. D. Va., decided March 5, 1943
*Leme, The*, D. Ore., decided November 8, 1943
*Lynch* v. *United States*, 292 U. S. 571
*Markham* v. *Allen*, No. 60, this Term, decided January 7, 1946
*Miller, Application of*, 288 Fed. 760
*Miller, In re*, 281 Fed. 764
*Monfiore, The*, E. D. La., decided February 12, 1943
*Mongioia, The*, S. D. Tex., decided February 20, 1943
*Perry* v. *United States*, 294 U. S. 330
*Pietro Campanella, The*, 41 F. Supp. 657



Cases—Continued
*Pietro Campanella, The*, 47 F. Supp. 374
*Prize Cases*, 2 Black 635
*San Guiseppe, The*, E. D. Va., decided March 5, 1943
*Sonora, The*, 50 F. Supp. 687
*Stoehr* v. *Wallace*, 255 U. S. 239
*United States* v. *Chemical Foundation*, 272 U. S. 1
*United States* v. *422 Casks of Wine*, 1 Pet. 547
*United States* v. *The San Leonardo*, 51 F. Supp. 107
*Villorin, The*, E. D. Va., decided March 5, 1943
*Ware* v. *Hylton*, 3 Dall. 199
Statutes:
Act of June 15, 1917, Title II, Sec. 3, 40 Stat. 220, as amended, 50 U. S. C. 193
Act of June 6, 1941, 55 Stat. 242, 50 U. S. C. App. Supp. IV, 1271
First War Powers Act, 1941, 55 Stat. 838
Merchant Marine Act, 1936, 49 Stat. 2015, as amended, 46 U. S. C. 1242
Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U. S. C. App. Supp. IV, 1–31
Sec. 2
Sec. 4
Sec. 5 (b)
Sec. 7 (c)
Sec. 9 (a)
Executive Orders:
Exec. Ord. No. 8389 of April 10, 1940, 5 F. R. 1400, as amended by Exec. Ord. No. 8785 of June 14, 1941, 6 F. R. 2897
Exec. Ord. No. 8771 of June 6, 1941, 6 F. R. 2759
Exec. Ord. No. 9095 of March 11, 1942, 7 F. R. 1971, as amended by Exec. Ord. No. 9193 of July 6, 1942, 7 F. R. 5205
Miscellaneous:
2 Von Martens, *Precis du Droit des Gens* (1831)
Lawrence, *Principles of International Law* (7th Ed. 1910)



# In the Supreme Court of the United States

OCTOBER TERM, 1945

---

No. 1172

GIUSEPPE BOZZO FU LORENZO, AS OWNER OF THE STEAM VESSEL "ANTOINETTA," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.

---

No. 1173

A. T. ROSASCO, AS OWNER OF THE STEAM VESSEL "SANTA ROSA," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.

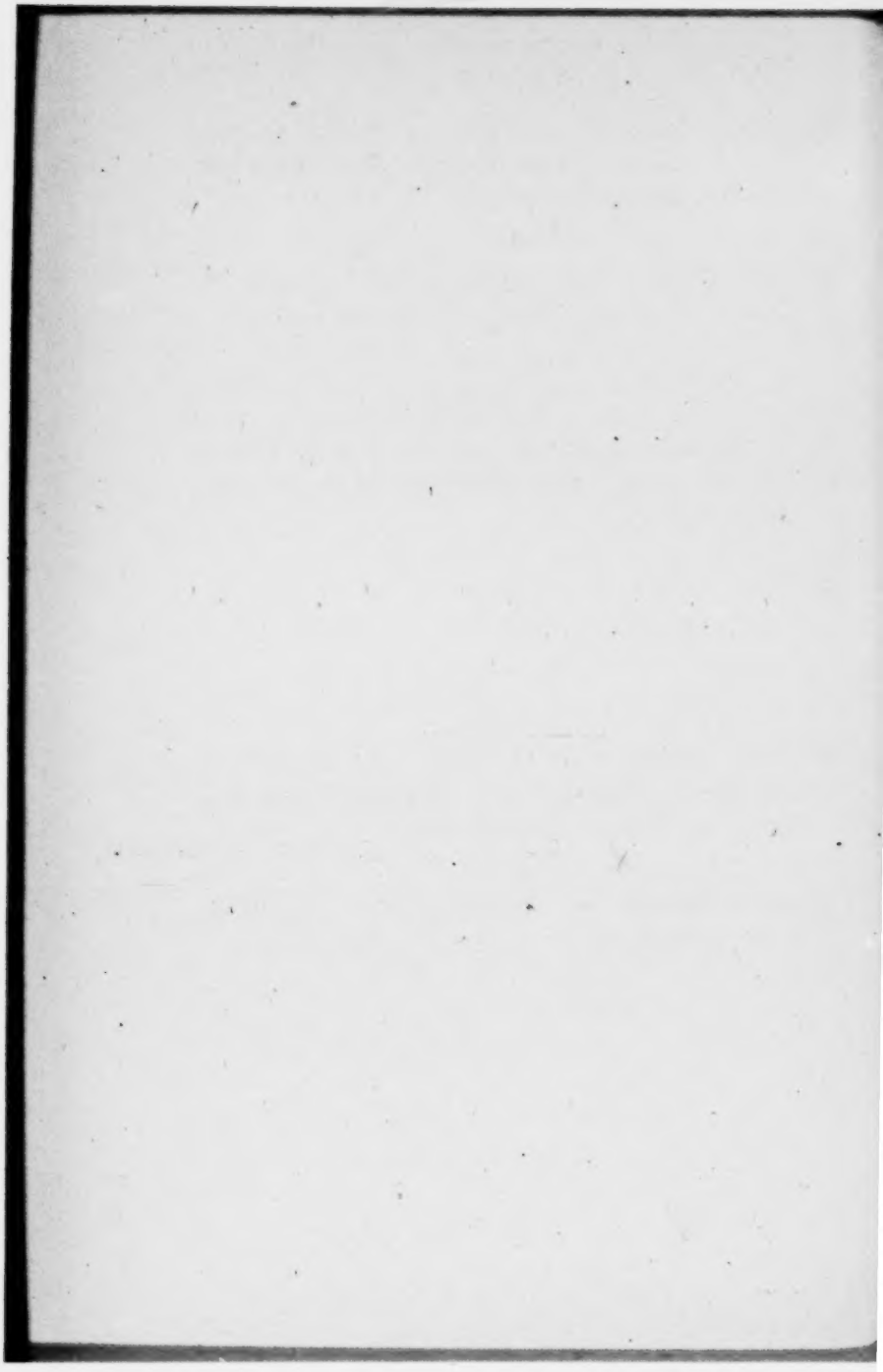
---

No. 1174

MARIANO MARESCA AND COMPANY, AS OWNER OF THE STEAM VESSEL "MAR GLAUCO," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.



No. 1175

"ITALIA"—SOCIETA ANONIMA DI NAVIGAZIONE, AS OWNER OF THE STEAM VESSEL "BELVIDERE," HER ENGINES, BOILERS, ETC., PETITIONER

*v.*

UNITED STATES OF AMERICA AND JAMES E. MARKHAM, ALIEN PROPERTY CUSTODIAN, ETC.

---

*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

---

**BRIEF FOR THE UNITED STATES AND THE ALIEN PROPERTY CUSTODIAN IN OPPOSITION**

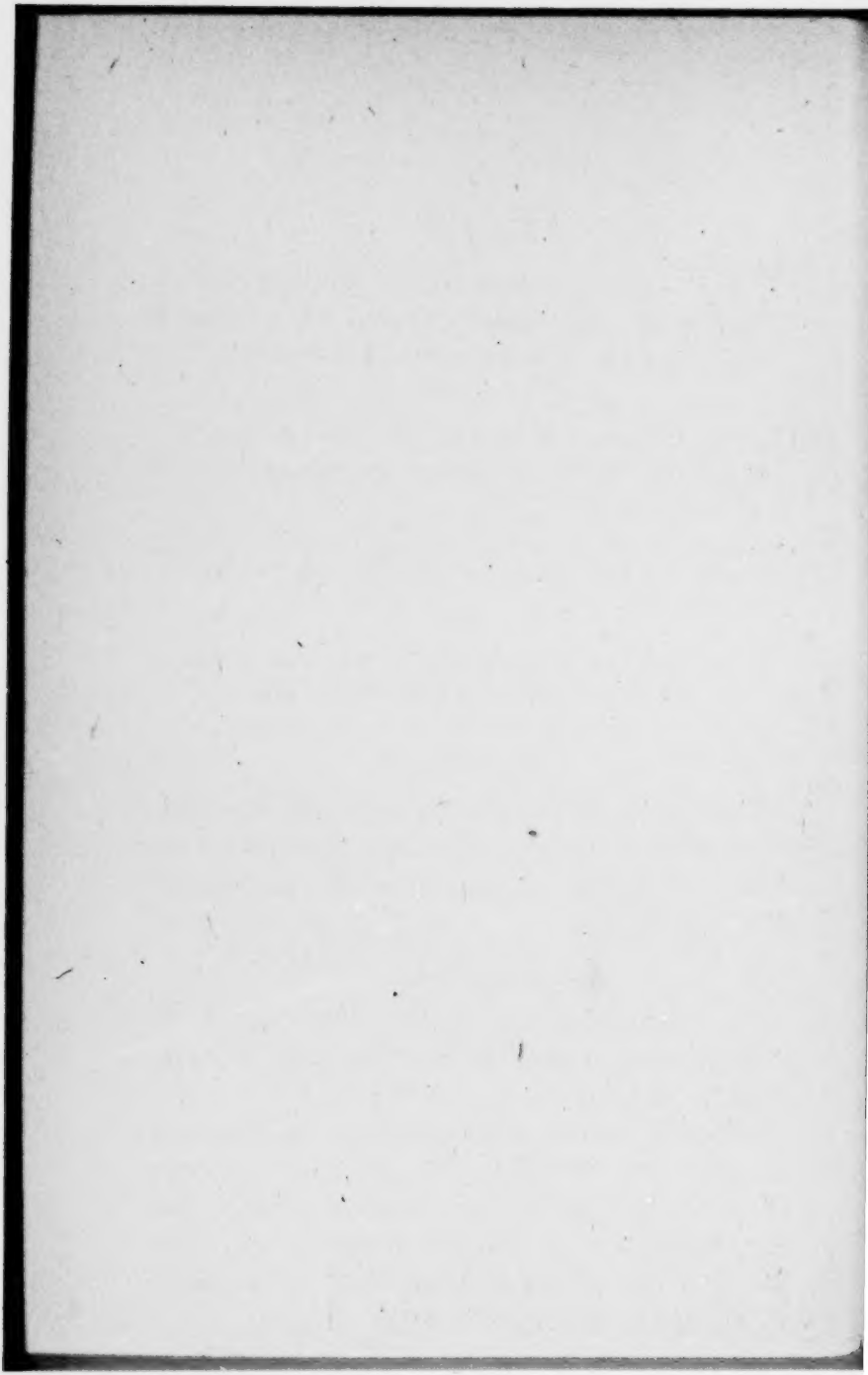
---

**OPINIONS BELOW**

The opinion of the district court (R. 46a–57a) is reported at 49 F. Supp. 148. The opinion of the circuit court of appeals (R. 85–93) is reported at 153 F. 2d 138.

**JURISDICTION**

The four judgments of the circuit court of appeals were entered on December 21, 1945 (R. 94–97). A petition for rehearing (R. 107–135) was denied by four orders entered on February 13, 1946 (R. 136–137). The petition for writs of certiorari was filed on April 30, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.



## QUESTION PRESENTED

Whether, in a proceeding brought by the United States under the Act of June 15, 1917, for the forfeiture of certain vessels, the district court properly substituted the Alien Property Custodian for the enemy claimant of the vessels, following the Custodian's order under the Trading with the Enemy Act vesting in himself all the "right, title, and interest, if any," of the claimant in such vessels.

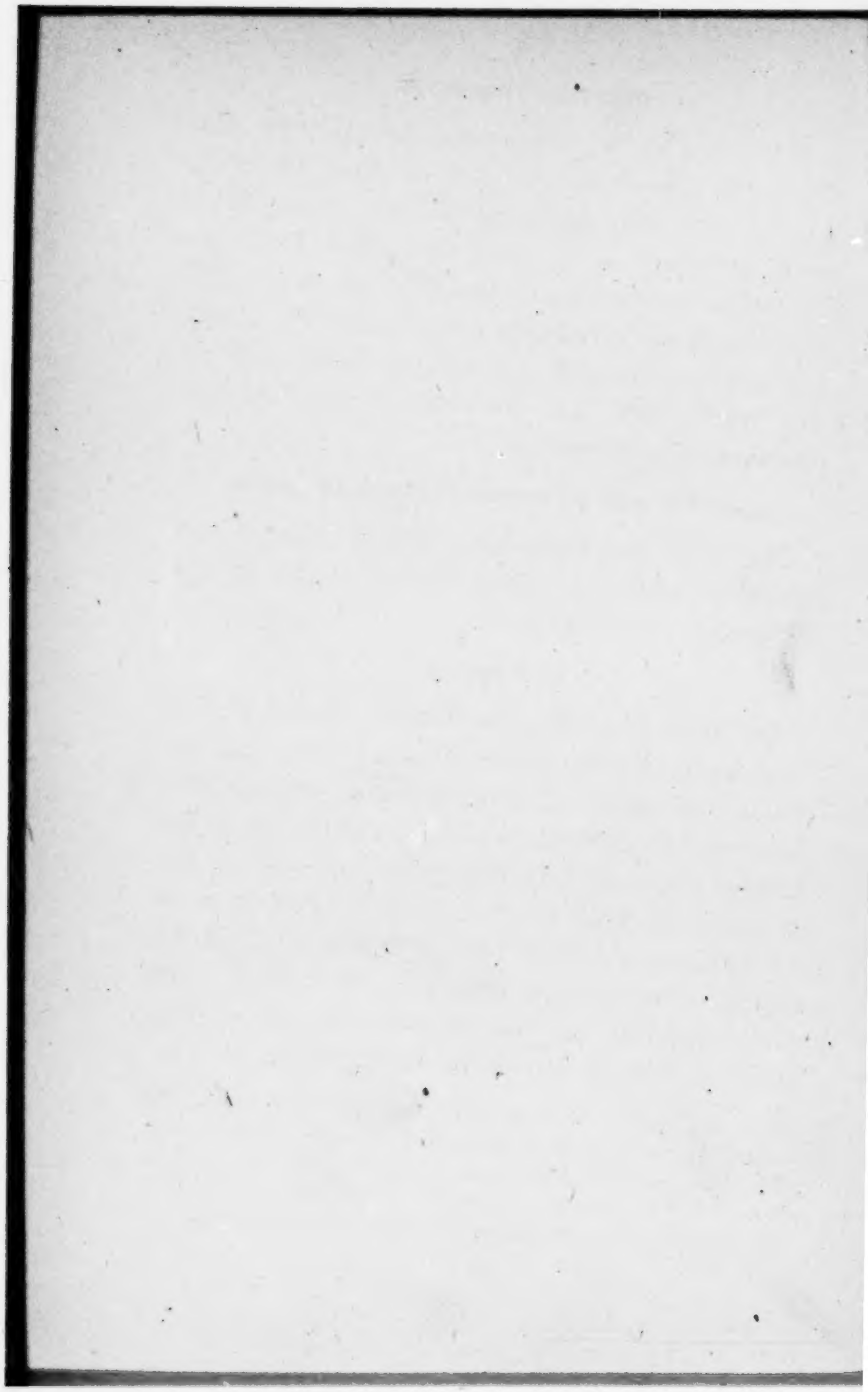
## STATUTES AND EXECUTIVE ORDERS INVOLVED

The pertinent provisions of the statutes and executive orders involved are set forth in the Appendix, *infra*, pp. ——.

## STATEMENT

On July 14, 1941, the United States filed a libel in the United States District Court for the Eastern District of Pennsylvania, seeking forfeiture of the vessel *Antoinetta*, together with her tackle, apparel, furniture, and equipment, for violation of Title II, Sec. 3 of the Act of June 15, 1917, as amended (40 Stat. 220, 50 U. S. C. 193; Appendix, *infra*, pp. ——) (R. 4a–6a).[1] The libel, couched in the language of the statute, alleged that on March 30, 1941, while the *An-*

[1] Three additional libels were filed for forfeiture of the vessels *Santa Rosa*, *Mar Glanco*, and *Belvedere*, respectively. The four proceedings were substantially identical, and this brief follows the practice of petitioner and both courts below by referring only to the facts relating to the *Antoinetta*.

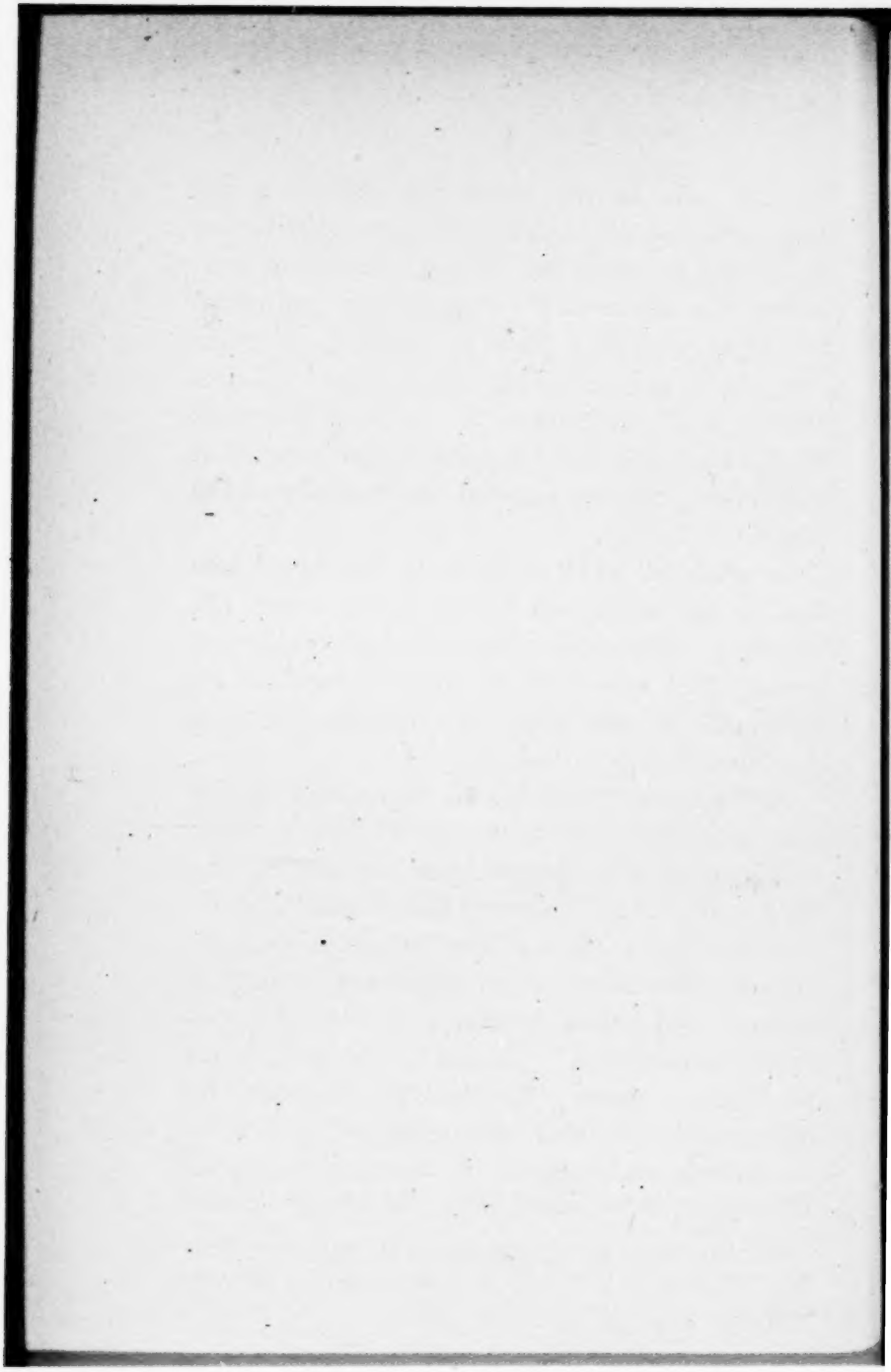


*toinetta* was in the territorial waters of the United States, her owner, master, or other person in charge or command willfully caused or permitted her destruction and knowingly permitted her to be used as a place or resort for persons conspiring or preparing to commit offenses against the United States (R. 4a–5a). Pursuant to the libel, the district court issued a writ of attachment, and the marshal took custody of the vessel (R. 7a–9a).

On July 31, 1941, a claim to the vessel was filed by her master on behalf of the owner (R. 11a–12a). Thereafter, the claimant (petitioner herein) filed exceptions to the libel, seeking its dismissal (R. 13a–17a). No hearing on these exceptions has been had.

On September 26, 1941, the Maritime Commission, acting pursuant to the Act of June 6, 1941,[2] requisitioned the use of the *Antoinetta,* the "Notice of Taking" reciting that it was "without prejudice to the rights of the United States under any executive seizure of, or forfeiture proceedings against, said vessel, heretofor or hereafter executed or instituted" (R. 23a). On petition of the United States (R. 18a–20a, 22a–23a), the district court directed compliance with the Notice of Taking, and ordered the marshal to appoint the master of the vessel as special deputy marshal

[2] 55 Stat. 242, 50 U. S. C. App. Supp. IV 1271; Exec. Order No. 8771, June 6, 1941, 6 F. R. 2759; Appendix, *infra*, pp. ——.



to turn over the vessel to the Maritime Commission for the purpose of the requisition, but to retain custody on behalf of the court. The court's order stated that it was "without prejudice to the continued custody of this Court over said vessel or to the rights of any of the parties * * * in the pending proceeding, or under said Act of June 6, 1941, the Court at all times retaining the custody and jurisdiction of said vessel in each of said proceedings" (R. 21a).

On July 22, 1942, the Alien Property Custodian, by Vesting Order No. 52, declared vested in the custodian, "all right, title and interest, if any," of the claimant in the Antoinetta, "to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States (R. 28a.)[3] The Order included a finding that the claimant was an enemy (as defined in Section 2 of the Trading with the Enemy Act), not holding a license under the Act, and that the claimant's right, title, and interest, if any, in the vessel was the property of a national of a foreign country designated in Executive Order No. 8389, as amended, as defined therein (R. 28a). The Order stated that it should not "be construed as impairing such rights as the United States may already have in respect

[3] The Vesting Order was issued under the Trading with the Enemy Act, as amended—particularly Secs. 7 (c) and 5 (b) thereof (40 Stat. 411, 50 U. S. C. App. 1–31), and Exec. Order No. 9095 of March 11, 1942, 7 F. R. 1971.

of said [vessel] including specifically but not exclusively rights of forfeiture and salvage rights, whether or not already established by adjudication" (R. 29a–30a). The order expressed its "intention" to "effect a complete substitution" of the Custodian for the claimant, "in respect of any right, title or interest" the claimant might have in the vessel (R. 29a–30a).

On July 29, 1942, the Custodian petitioned the district court to substitute him for the claimant, and to adjudge that such right, title and interest, if any, as the claimant may have had in the vessel prior to the Vesting Order, had been vested in the *Custodian* (R. 24a, 26a). The claimant answered, admitting that he was an enemy and a foreign national (R. 41a), and moved for an order dismissing both the Custodian's petition and the libel (R. 44a–45a). The district court granted the Custodian's petition, holding that the Vesting Order had completely transferred to the Custodian the claimant's interest, if any, in the vessel, and that since the claimant's right to defend the libel could "only rest upon his claim to the libeled property", "the substitution of the Custodian was an inevitable" sequel (R. 46a, 49a, 58a). On appeal the court below affirmed, holding that the Vesting Order had divested claimant of whatever rights he may have had in the vessel, and that the Custodian had been properly substituted for him. The court below

also sustained the sufficiency of the libel, held that the district court had not lost jurisdiction by complying with the requisition, and ruled that despite the substitution of the Custodian for the claimant, a justiciable controversy remained.

## ARGUMENT

The petition and supporting brief, aggregating some 126 pages, present only a single substantial question: whether the Alien Property Custodian, upon vesting all the "right, title, and interest, if any" of petitioner in a vessel which was the subject of a pending forfeiture proceeding, became entitled to be substituted for petitioner, as claimant. This question, which is not one of general importance, was answered in the affirmative by the court below, and its decision in this regard was clearly correct.[4]

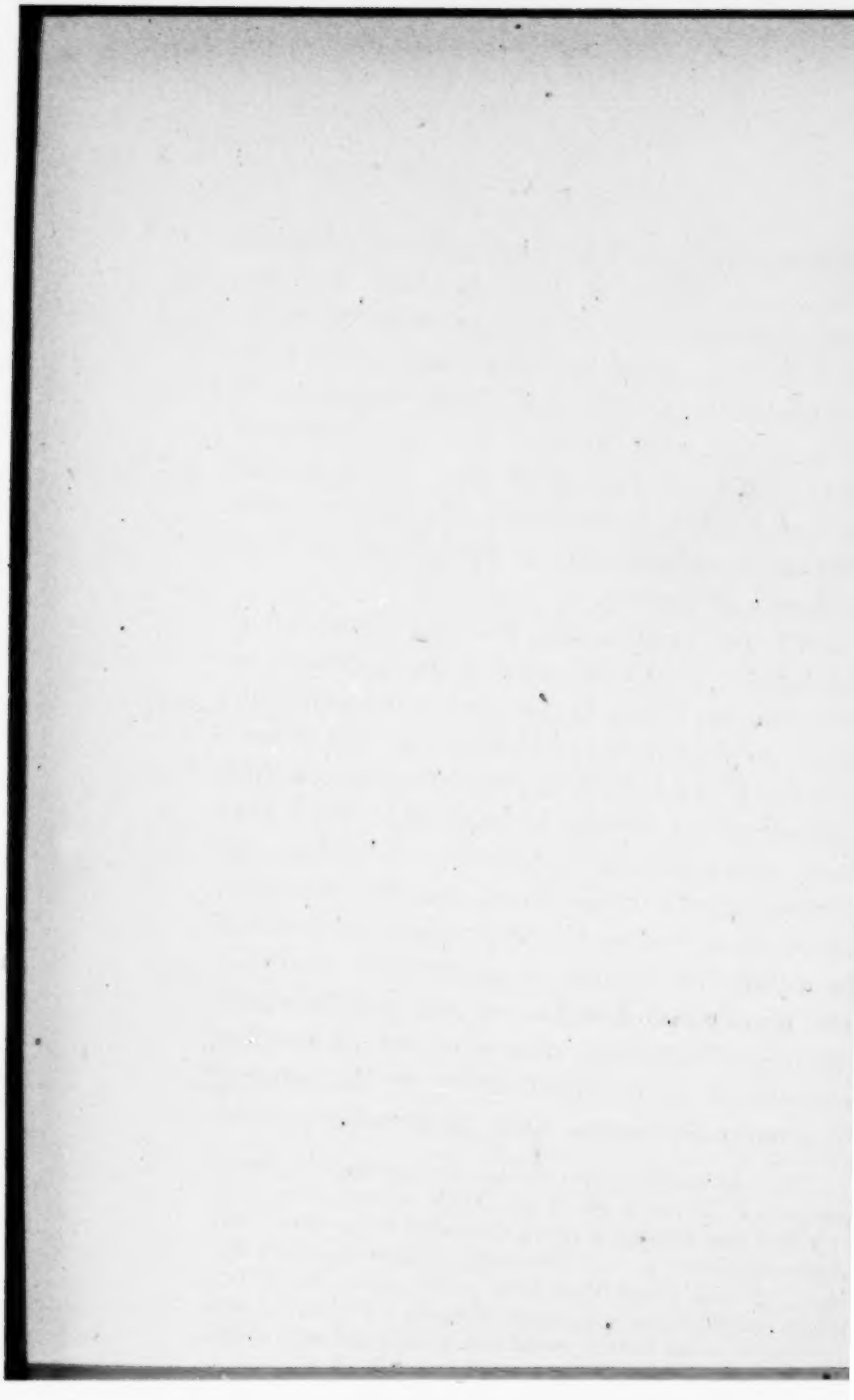
1. By the issuance of the Vesting Order, whose validity petitioner, as an enemy national (R. 41a), is without standing to challenge (*Central Trust Company* v. *Garvin*, 254 U. S. 554; *Stochr* v.

[4] Apart from the substitution of the Custodian for petitioner, petitioner questions the correctness of the decision below with respect to (1) the sufficiency of the libel, (2) the effect upon the district court's jurisdiction of its own order directing compliance with the requisition, and (3) the existence of a case or controversy following the substitution of the Custodian for petitioner. If, as we contend, the Custodian was properly substituted for petitioner, petitioner no longer has any legal interest in the forfeiture proceeding and therefore has no standing to raise any of these questions.

*Wallace*, 255 U. S. 239; *Farbwerke* v. *Chemical Foundation*, 283 U. S. 152, 161–162),[5] the Custodian succeeded "to all the rights in the property * * * as if by conveyance, transfer, or assignment." *Commercial Trust Company* v. *Miller*, 262 U. S. 51, 56; see *Cummings* v. *Deutsche Bank*, 300 U. S. 115. Thereafter petitioner had no interest left in the vessel, he had therefore nothing to defend, and he had hence no right to remain as a party.

Petitioner argues (Br. 103–108) that even if the Vesting Order terminated his property interest in the vessel, he retained a defensible interest in forfeiture proceeding, on the theory that (1) if the forfeiture proceeding were to fail, grounds might thereby be established for a personal action against the Collector of Customs for tortious seizure of the vessel, and (2) the vessel, by becoming vested property, would be available to satisfy the claims of petitioner's creditors. But plainly such benefits are only possible consequences of litigation over property of another, and cannot confer upon petitioner the standing of a party defendant. Only by virtue of a "pro-

[5] The only remedy which the Act confers upon the former owner is a suit under Sec. 9 (a) for the return of the property, but that remedy is expressly denied to an enemy (See Appendix, *infra*, p. —). Similarly, while a nonenemy foreign national, disqualified from relief under Sec. 9 (a), might be entitled to just compensation in a Tucker Act suit, petitioner, as an enemy, could not qualify for such relief. *Deutsch-Australische &c.* v. *United States*, 59 Ct. Cls. 450.



prietary interest in the thing in controversy" could petitioner have any standing to continue as a party. *United States* v. *422 Casks of Wine*, 1 Pet. 547, 549–550.

2. As we have already noted, petitioner's lack of standing to challenge the validity of the Vesting Order, quickly disposes of his claim that the decision below was erroneous. However, even if petitioner had the requisite standing, he could not show the Vesting Order to be invalid; the numerous attacks which he makes upon the Order are all without merit.

a. Petitioner contends (Br. 100–102) that the Custodian's vesting power is conditioned upon a preliminary finding by the Custodian that there is a *presently existing* interest owned by an enemy—a determination not made in the Vesting Order here involved. But nothing in the Trading with the Enemy Act forbids the vesting of contingent or undetermined interests; and, there is an abundance of authority in the Act, and executive orders issued thereunder, for the vesting of such interests.[6] The capture of these interests

[6] Sec. 5 (b) of the Act authorizes the vesting of "any property or interest of any foreign country or national thereof" and authorizes the President to prescribe definitions of any or all of the terms used in the subdivision (Appendix, *infra*, p. —). The President has authorized the Custodian to vest various species of property, including "any ship or vessel or interest therein, in which any foreign country or national thereof has an interest"; the Custodian's authority also comprehends "any property of any nature whatso-

plainly serves one of the purposes of the Act—the lessening of the enemy's ability to derive any advantage, by sale or otherwise, from property interests, whether actual or merely asserted, in the United States. *United States* v. *Chemical Foundation*, 272 U. S. 1, 9–10. The Custodian's method of taking these interests—the "right, title and interest" Vesting Order here employed—has been approved both during the last war (*Application of Miller*, 288 Fed. 760 (C. C. A. 2); *In re Miller*, 281 Fed. 764 (C. C. A. 2); *Kahn* v. *Garvan*, 263 Fed. 909 (S. D. N. Y.)) and during this war (*Markham* v. *Allen*, No. 60, this Term, decided January 7, 1946.)[7]

---

ever * * * which is in partition, libel, condemnation or other similar proceedings and which is payable or deliverable to or claimed by a designated enemy country or national thereof" (Secs. 2 (e) and (f) of Exec. Ord. No. 9095 of March 11, 1942, as amended by Exec. Ord. No. 9193 of July 6, 1942; Appendix, *infra*, pp. ——). Similarly, Sec. 7 (c) of the Act authorizes the Custodian to demand and seize "any * * * property including * * * choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy" (Appendix, *infra*, p. —).

[7] The express terms of the Vesting Order here involved dispose of the petitioner's point (Br. 64–65), apparently not seriously pressed, that the United States sought inconsistent remedies against the vessel—that it may not simultaneously seek forfeiture under the Act of June 15, 1917, and capture under the Trading with the Enemy Act. But the Vesting Order, by its very terms, only took such interest as the petitioner might have, *i. e.*, such interest as might survive the forfeiture proceeding. The Order neither affirmed nor de-

b. Petitioner also contends (Br. 83) that the Vesting Order "was not within the purpose" of the Trading with the Enemy Act, because the Order allegedly failed to "cripple the enemy's power of waging war." But as noted above, the vesting of contingent or undetermined interests effectuates one of the purposes of the Act by preventing the enemy from bettering himself through the sale of such interests. In any event, the Custodian's decision to issue the Order was a discretionary determination of the occasion for the exercise of a war power, and is not reviewable. Cf. *Hirabayashi* v. *United States*, 320 U. S. 81, 93; *The Prize Cases*, 2 Black 635, 670; *Citizens Protective League et al.* v. *Clark, Attorney General*, Nos. 9193–9195, (App. D. C.), decided May 2, 1942, slip sheet opinion, p. 5.

c. Petitioner next argues (Br. 66–70) that the requisition gave his interest the character of sovereign property of the United States, thus rendering it immune from vesting.[8] The requi-

---

nied the petitioner's title, but merely recognized the fact of the forfeiture proceeding and did not attempt to prejudge its outcome. There was thus no inconsistency between the forfeiture and the Vesting Order.

[8] Alternatively, petitioner advances the contention (Br. 71–83) that the requisition gave him an irrevocable license, within the meaning of Section 7 (c) of the Trading with the Enemy Act (Appendix, *infra*, p. —), to continue to hold his property as against the Custodian. Moreover, on petitioner's hypothesis, this "license" must have been granted by the Maritime Commission and not by the Custodian; it must have been granted pursuant to a requisition statute and not the

sition order, however, expressly disclaimed giving petitioner's interest a special character, for it stated that "such taking is without prejudice to the rights of the United States under any executive seizure of, or forfeiture proceedings against, said vessel, heretofore or hereafter effected or instituted" (R. 23a). The order went so far and only so far as to take the possession and use of the vessel, and to state that just compensation would be afforded to the true owners, whoever they might be. *The Sonora*, 50 F. Supp. 687 (S. D. Tex.); *The Pietro Campanella*, 41 F. Supp. 657, 658–659 (D. Md.).

d. Petitioner also argues (Br. 84–90) that the Vesting Order attempted to repudiate a contractual obligation, created by the requisition, to restore the vessel and pay for its use, and therefore violated the constitutional command that the "validity of the public debt of the United States * * * shall not be questioned" (Fourteenth Amendment, Sec. 4). The short answer

---

Trading with the Enemy Act: and it must be deduced from a document—the order of requisition—which does not mention the petitioner or his interest in the vessel, and expressly disavows any intention to prejudice executive seizures of the vessel. Indeed, when the requisition was made, on September 26, 1941, the United States was not at war, and in consequence there was no enemy property which could be seized. Additionally, Section 4 of the Trading with the Enemy Act (Appendix, *infra*, p. —) expressly makes licenses revocable, so that the Vesting Order clearly revoked whatever license was then outstanding.

to this contention is that the obligation was not repudiated, but was simply conveyed to the Custodian by the Vesting Order. *Commercial Trust Co.* v. *Miller*, 262 U. S. 51; *Central Trust Co.* v. *Garvan*, 254 U. S. 554; *Stoehr* v. *Wallace*, 255 U. S. 239; *Farbwerke* v. *Chemical Foundation*, 283, U. S. 152. On petitioner's theory, enemy-owned Government bonds and, indeed, enemy-owned cash in the form of obligations of the United States Treasury, would be immune from vesting.[9]

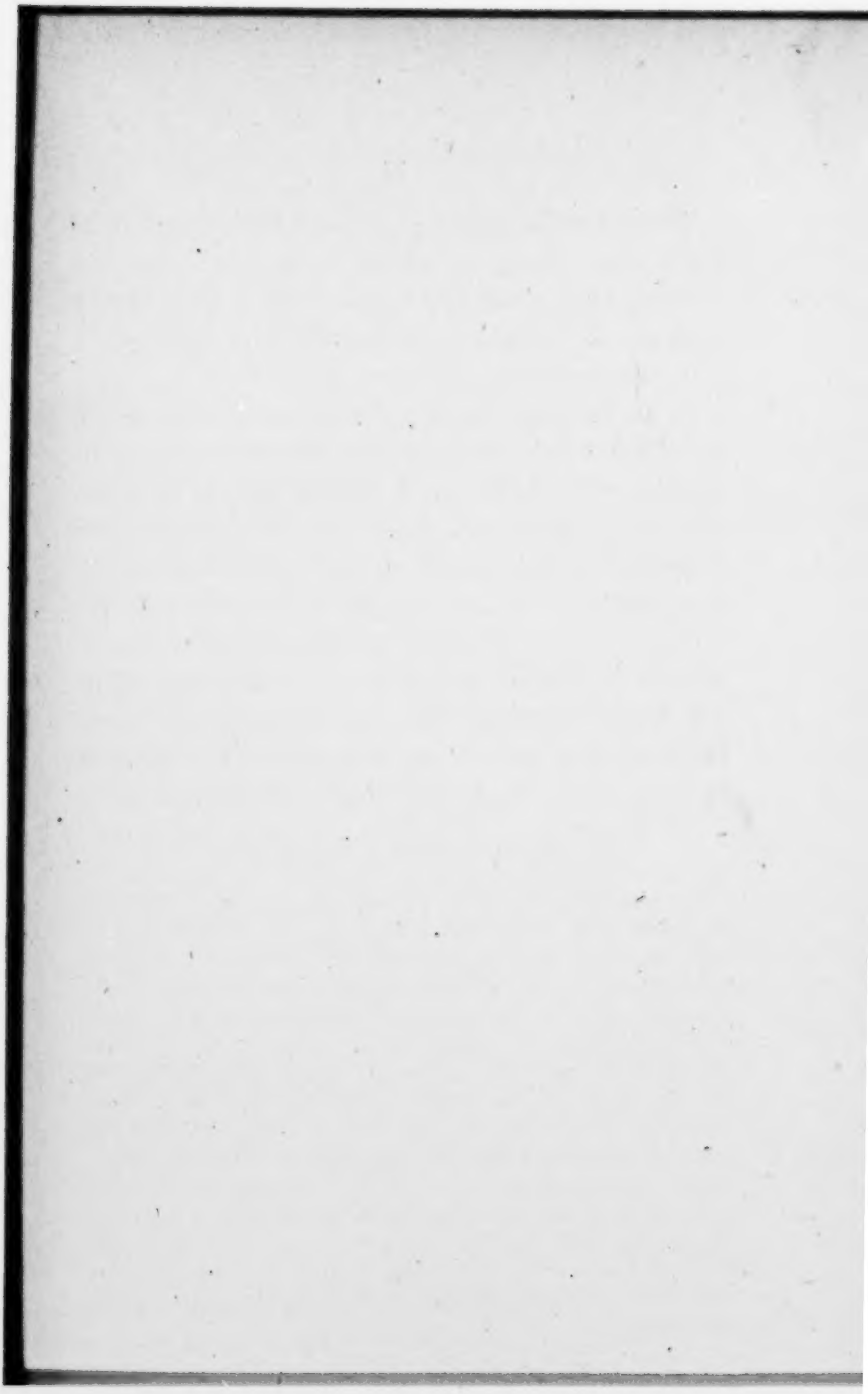
c. Finally, petitioner cites a rule of international law forbidding the repudiation of a public debt in the hands of the enemy (Br. 90–99). Even if this rule was ever more than a principle of expediency designed to preserve the credit of the state and applicable only to formal loans, as to which see 2 Von Martens, *Precis du Droit des Gens* (1831), p. 193; Lawrence, *Principles of International Law* (7th Ed. 1910) p. 406, it is plainly inapplicable in the presence of such contrary domestic legislation as the Trading with the Enemy Act. See *Ware* v. *Hylton*, 3 Dall. 199, 229.

[9] In any event, the Government's promise to pay just compensation may not be read as a promise to pay plus a guarantee against the use of all other sovereign powers which might operate to prevent payment. A contract with the sovereign is not, unless expressly stated, to be construed as a renunciation of the sovereign's other powers. *Horowitz* v. *United States*, 267 U. S. 458. See *Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U. S. 398, 435.

From the foregoing, it is clear that, apart from petitioner's lack of standing to challenge the Vesting Order, the Order was valid in all respects, and vested in the Custodian whatever interest, if any, that petitioner still had in the vessel.

3. In holding that the Custodian was properly substituted for petitioner, the decision below is in conflict with decisions of district courts in other circuits.[10] However, there are no factors here presented which would warrant departure from the general rule that a conflict between the decision of a circuit court of appeals and the decisions of district courts is an insufficient reason for review on certiorari. In one case, *The Leme*, the forfeiture proceeding in the District of Oregon is going forward; in the others, hearing has been

[10] *E. G., The Pietro Campanella*, 47 F. Supp. 374 (D. Md.; stay *pendente bello* granted); *The Ida Z. O.*, (D. Ala., decided November 13, 1942, without opinion; stay *pendente bello* granted); *The Clara, The Giuan, The Guidonia, The Laconia, The San Giuseppe* and *The Vittorio*, (D. Va., decided March 5, 1943, without opinion; stay *pendente bello* granted); *United States* v. *The San Leonardo*, 51 F. Supp. 107 (D. N. Y.); *The Confidenza* and *The Ircania*, (D. Fla., decided January 5, 1943, without opinion); *The Ada Ox* and *The Monfiore*, (D. La., decided February 12, 1943, without opinion); *The Mongioia*, (D. Tex., decided February 20, 1943, unreported, Custodian permitted to intervene; other relief denied); *The Leme*, (D. Ore., decided November 8, 1944, without opinion; Custodian permitted to intervene; other relief denied); *The Conte Biancamano*, (D. C. Z., decided September 20, 1943, without opinion; Custodian permitted to intervene; other relief denied; stay granted *pendente bello*).



postponed or stayed by order of the court. In all the cases, the Custodian is a party and may protect his rights under the Vesting Order. There is no reason to believe that the district courts involved (or the appropriate circuit courts of appeals if appeal ultimately becomes necessary) will decline to follow the well reasoned and clearly correct decision of the court below.

## CONCLUSION

The decision below is correct, the question is not one which warrants further review, and there is no conflict with any other circuit court of appeals. The petition for writs of certiorari should therefore be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
*Solicitor General.*
JOHN F. SONNETT,
*Assistant Attorney General.*
JOSEPH B. GOLDMAN,
DAVID SCHWARTZ,
DAVID E. FELLER,
*Attorneys.*

RAOUL BERGER,
*General Counsel to the Alien Property Custodian,*
*Of Counsel.*

697178—46——2